

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CARLOS E. VALLE,
Plaintiff

vs

MACYS/DSNB,
Defendant

Case No. 1:10-cv-533

Spiegel, J.
Hogan, M.J.

REPORT AND RECOMMENDATION

Plaintiff Carlos E. Valle, an inmate at the Federal Bureau of Prisons, submitted a “Complaint under the Constitution (Bivens action), Title 28 Section 1331(a) U.S. Code” against Macys/DSNB. On August 10, 2010, the Court ordered plaintiff Carlos E. Valle to submit a certified copy of his trust fund account statement (or institutional equivalent) or pay the full filing fee of \$350 within thirty (30) days. (Doc. 2).

On August 20, 2010, the Clerk of Court received an “affidavit or declaration in support of motion for leave to proceed *in forma pauperis*” in the name of and signed by “Erick Guillermo Valle.” (Doc. 4). Appended thereto is a prison trust fund account statement for “Erick Valle-Iglesias.” (Doc. 4). However, the Court did not receive a trust fund account statement from “Carlos E. Valle.”

In view of the discrepancy between the name of the plaintiff appearing on the complaint and original *in forma pauperis* motion and the name of the plaintiff appearing on the second motion and trust fund account statement, plaintiff was ordered to show cause within twenty (20) days why his complaint should not be dismissed for his failure to comply with the Court’s Order of August 10, 2010. (Doc. 5).

To date, plaintiff has failed to comply with the Court’s Show Cause Order.

District courts have the inherent power to *sua sponte* dismiss civil actions for want of

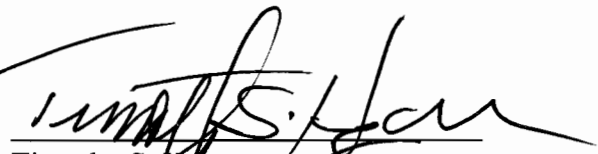
prosecution to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962). *See also Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991). Failure of a party to respond to an order of the court warrants invocation of the Court’s inherent power. *See Fed. R. Civ. P. 41(b)*. Accordingly, dismissal is appropriate.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff’s case be **DISMISSED** with prejudice for lack of prosecution.
2. The Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Court’s Order would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601 (6th Cir. 1997).

Date: _____

9/20/10


Timothy S. Hogan
United States Magistrate Judge

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NOTICE TO THE PARTIES REGARDING FILING OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **FOURTEEN DAYS** after being served with this Report and Recommendation (“R&R”). Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days (excluding intervening Saturdays, Sundays, and legal holidays) because this R&R is being served by mail. That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. If the R&R is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party’s objections within **FOURTEEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

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<p>1. Article Addressed to:</p> <p>Carlos E. Vaile #75048-053 PO Box 150160 Atlanta, GA 30315-0160</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
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1:10 cv 533 (Doc. 7)